

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VICTOR GLEN CRON,

Defendant-Appellant.

UNPUBLISHED

March 24, 2009

No. 283908

Kent Circuit Court

LC No. 04-006801-FH

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant appeals as of right the sentence imposed on remand on his jury trial conviction of criminal sexual conduct in the second degree (CSC II), the victim being under 13 years of age, MCL 750.520c(1)(a). We affirm defendant's sentence, but remand for correction of defendant's order of probation to reflect the proper sentencing credit for time previously served in prison. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Following a jury trial, defendant was convicted of one count of CSC II and one count of criminal sexual conduct in the fourth degree (CSC IV), MCL 750.520e(1)(a) (victim between 13 and 16 years of age and actor is more than five years older than victim). Defendant was sentenced to two to 15 years in prison for CSC II, and to 16 to 24 months in prison for CSC IV. This Court affirmed defendant's convictions. *People v Cron*, unpublished per curiam opinion of the Court of Appeals, issued March 22, 2007 (Docket No. 265576). However, our Supreme Court reversed in part and vacated defendant's conviction and sentence for CSC IV, holding that, "In this case, the jury should not have been instructed on fourth-degree criminal sexual conduct, because that offense is not a necessarily included lesser offense of second-degree criminal sexual conduct." *People v Cron*, 480 Mich 999, 999; 742 NW2d 126 (2007), citing *People v Nyx*, 479 Mich 112; 734 NW2d 548 (2007). Our Supreme Court remanded for resentencing on defendant's remaining conviction of CSC II. On remand, the trial court sentenced defendant to five years' probation, with the first 12 months to be served in the county jail.

Defendant first argues that the trial court erred when it declined to strike information concerning the vacated conviction from the amended presentence investigation report (PSIR). During resentencing, the trial court found that the information was useful to explain the history of the case and to understand our Supreme Court's order. The trial court found that the inclusion of the information would not result in confusion because it had attached our Supreme Court's order to the PSIR as well.

We review a trial court's decision regarding factual disputes in a PSIR for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). The trial court has not abused its discretion if it arrives at a "reasonable and principled outcome." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Pursuant to MCL 771.14(6), a defendant may challenge the accuracy or relevancy of any information contained in the PSIR. "If the court finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections." *Id.* Here, defendant contends that the report was not accurate since it contained information concerning the vacated conviction of CSC IV.

We disagree with defendant's characterization of the information concerning defendant's second alleged assault. The PSIR contains basic factual recitations concerning the alleged circumstances of the assault against the second victim, the initial charge, and the second conviction. This information is not inaccurate. Moreover, even given the vacation of defendant's conviction of CSC IV, this information remained relevant for sentence scoring, either in the instant case or in a subsequent proceeding.¹ In this case, the trial court was aware of the vacation of defendant's additional conviction, and defendant does not maintain that the trial court erroneously relied on the challenged information in the PSIR. Nor is the information misleading, given the addition of our Supreme Court's order to the information contained in the PSIR. Defendant has thus not shown that he is entitled to relief.

Defendant also argues that he was entitled to credit toward his probationary term for the time he spent in prison after his initial sentencing. On resentencing, the trial court sentenced defendant to five years' probation, with the first 12 months to be served in the county jail, with credit for time served since July 1, 2005. Defendant argues that, given the 16 days' additional credit noted on the amended judgment of sentence, his probation should end on June 14, 2010. According to defendant, however, his probation agent informed him that he would not be discharged from probation until July 1, 2013. He maintains that the agent was apparently relying on the Order of Probation. The "term" section of the order contains only the language, "5 year(s) (02/05/2008)."

According to the Michigan Offender Tracking Information System, defendant has a supervision release date of February 5, 2010. Thus, defendant's complaint may be moot. However, while defendant provides no case law or statutory support for his claim that he is entitled to credit for his time previously served, his argument is correct. When a void sentence is set aside and a new sentence is imposed, any time served on the void sentence must be credited against the new sentence. MCL 769.11a; *People v Sims* 38 Mich App 127, 130; 195 NW2d 766 (1972). See also *People v Lyons (After Remand)*, 222 Mich App 319, 321; 564 NW2d 114

¹ For example, Offense Variable (OV) 13 provides for enhanced scoring for a continuing pattern of criminal behavior concerning crimes that happen within a five-year period, "regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a).

(1997). Defendant should receive credit for the time spent in prison prior to resentencing. Because the order of probation does not clearly reflect defendant's sentence credit, and this has apparently resulted in some confusion concerning defendant's probation discharge date, we remand for correction of the order to reflect the proper amount of sentence credit.

Defendant's sentence is affirmed. This case is remanded for correction of defendant's order of probation to reflect credit for time previously served. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood

/s/ Alton T. Davis